CHAPTER 9. SERVICE CONTRACT ACT PRICE ADJUSTMENTS

9-1. General. The DOL periodically revises their SCA WDs to reflect current prevailing wage and benefit rates for the various localities. As provided by the DOL's regulations (29 CFR 4.4), the CO incorporates annual WD revisions into the contract when options are exercised, annual appropriations (new fiscal year funds) are added, or when the scope of the work is significantly modified, provided the WD revisions are received timely in accordance with FAR 22.1012. For multi-year contracts without annual appropriations or options, revised WDs are incorporated biennially.

9-2. Requests for Price Adjustments. In response to revised WDs having been incorporated into the contract and increases in the Fair Labor Standards Act minimum wage rate, the contractor may request a price adjustment. The revised WD must be officially incorporated into the contract before an adjustment claim can be processed. SCA and FLSA contract price adjustments apply to labor categories, listed on the contract's WD, which perform the work of the contract. The CO must assess the allowability and accuracy of the request and make the appropriate contract price adjustment. These adjustments are addressed in FAR 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts), and FAR 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Fixed Price, Not Multiple Year or Option Contracts).

9-3. Price Adjustment Methods.

a. Generally, a contractor's claim is based upon the projected impact of new or revised contract labor standards. The projection uses the service employee hours worked in the prior contract period, factoring in any expected changes to contract scope or workforce. This method is known as the Forward Pricing Adjustment Method (FPAM). If the price adjustment request has been delayed by either an approved extension to the usual 30-day requirement for filing (see FAR 52.222-43(f) or 52.222-44(e)), or by a delay in contract modification, the contractor should use actual employee hours worked and pay/benefit records for the basis of the claim. This method is known as the Actual Cost Adjustment Method (ACAM). Regardless of method used, there are four types of documentation needed from the contractor to process an adjustment claim: (1) Actual or projected contract work hours; (2) Actual or projected pay (wage) records; (3) Documents supporting impact on fringe benefit costs; and (4) Documents supporting accompanying payroll tax increases.

b. An adjustment must never exceed the differential in wages, fringe benefits and additional taxes between the 'old' WD and the 'new' WD, nor should the 'old' minimum wage exceed the 'new'

minimum wage for an FLSA adjustment. A greater adjustment would indicate that the contractor was previously paying less than the minimum wage rates required under the SCA or FLSA and, therefore, that difference would strictly be the liability of the contractor.

9-4. Required Documentation for SCA Price Adjustments.

a. Documentation period. Using the FPAM, the contractor must provide wage and fringe benefit data from the previous contract period with their claim for adjustment. The data will normally cover a 12-month period, but may be for a shorter period if less than 12 months have elapsed on the contract. A shorter time period may not produce an accurate forecast, particularly if the workload fluctuates by month or season. Projected adjustments for an extension period (generally three months or less) should utilize only the corresponding months from the prior contract year if the workload is subject to fluctuations.

b. Content. The contractor is obligated to provide sufficient documentation, in the opinion of the CO, to substantiate the claim. The supporting payroll documentation must list the hourly wage rate actually paid each employee in the prior contract period. In addition to hourly wage rates, documentation concerning any additional payments made to the employees, such as performance-based merit bonuses or commissions should be provided. These payments must be considered in determining the total actual wages paid to the employees. They are frequently overlooked by contractors, and the CO should specifically ask the contractor whether any such compensation payments were provided. Stock dividends received by employee-stockholders, and other payments that represent a return on the owner's investment in the business, are **not** considered when calculating the wage rate. If a Health and Welfare (H&W) rates adjustment is claimed, the CO may require data supporting the actual premiums paid by the contractor, or the contractor's actual costs for equivalent benefits provided.

c. Contract Price Adjustment Computation Format. In addition to supporting documentation, COs are encouraged to use a standard format for consistency in evaluating and computing contractor price adjustment claims.

9-5 Applicable Contract Work Hours. The applicable hours subject to adjustment under these clauses are projected from the historical payroll data after adjustments are made for the following: (1) exempt employees; (2) changed work conditions or contract requirements; (3) prorated contract periods; and (4) employees not performing the services under the contract. These adjustments are set forth below.

a. Exempt employees. No adjustment in contract price is permitted for employees who are exempt from the SCA and FLSA. The contractor must exclude exempt employees from the payroll documentation before calculating adjustments. Typical exempt classifications are degreed engineers, doctors, project managers, directors, contract management officials. Any questions concerning the allowability of a particular classification should be directed to the CIR Specialist.

b. Adjustments for changed work conditions. The historical payroll data must be adjusted for any peculiarities that would not apply in the future or would otherwise impact future workload. Examples include changes in contract scope, equipment changes which may impact labor requirements, and scheduled reductions or increases in the services provided. If unusual events occurred in the payroll period as the basis for the computation, the impact of such events would have to be factored out of the adjustment computation for the following period.

c. Prorated periods. When using FPAM, the contractor may have less than 12 months of historical payroll data to use as a basis for projecting the next fiscal year's hours. The historical data may be prorated to apply an adjustment claim across the 12 months of the next period, provided the work is not subject to seasonal or other significant fluctuations. If the work is subject to fluctuation, contact the CIR Specialist for guidance before proceeding. To prorate the available data for the next fiscal year, calculate the average monthly hours worked for each labor category and multiply by 12.

Example: The contractor provided four months of payroll data for employees in several labor categories. After eliminating exempt employees, the records indicate one category of employees worked a total of 12,000 hours, and the other category of employees worked a total of 16,440 hours. The prorated hours are calculated by dividing the hours worked (12,000 and 16,440) by 4 (the number of months of data) to establish the monthly average by labor category (3,000 and 4,110 respectively), and then multiplying by 12. The applicable hours for the next fiscal year would be 36,000 for the first classification and 49,320 for the other labor classification.

d. Non-work hours. Production as well as non-production hours are adjusted for SCA wage increases (and decreases). Paid non-work hours, such as SCA-required vacation, sick leave, holidays, and other specified leave benefits are included in the applicable hours. Reference the sections on adjustments for fringe benefits concerning increases in the number of holidays or vacation days specified by the WD.

9-6. Wage Adjustment Computation. To determine the amount of the wage adjustment, the following factors must be considered: the applicable revised WD wage rate for the new contract period, LESS the actual wage rate paid in the previous period, PLUS allowable payroll taxes applicable to this differential, EXCLUDING general and administrative expenses (G&A), overhead, profit.

a. Calculating the actual wage rate paid. The actual hourly rate paid in the previous period is the total of the hourly rate paid plus other compensations (bonuses, commissions, shift differentials, etc.) converted to an hourly rate. The other compensations must be prorated over the hours worked in the period for which they are paid. To do this, divide the total other compensations by the number of hours they cover. A yearly bonus would be divided by 2,080 hours to convert it to an average hourly rate for the standard work hours in one year. Conversely, a commission that was calculated and paid quarterly would be divided by 520 hours to convert it to an hourly rate. The regular hourly wage rates and "other" compensation hourly rates are then added together for each employee to determine their total actual hourly wage rate paid in the previous period.

Example: The contractor paid a regular hourly rate of $7.10 per hour, and year-end performance bonus of $350 to each employee. The bonus payment would apply to the entire year of 2,080 hours, and thus represent an additional $.17 per hour wages ($350 divided by 2,080 hours). The total actual wage rate paid to this employee is $7.27 per hour for the year.

b. Calculating the applicable rate change. The amount of adjustment is limited to the difference between the new wage rate applicable to the contract and the wage rate applicable to the contract and the wage rate actually paid by the contractor to the employees in the previous contract period.

Example: The prior WD required a minimum wage rate of $7.00 per hour. The contractor actually paid employees $7.27 per hour in the contract period. The revised WD now requires a minimum wage rate of $7.50 per hour. The allowable hourly wage adjustment is limited to $.23 per hour ($7.50 less the actual wages paid of $7.27). No adjustment would be due if the contractor had paid wage rates in the previous period equal to or greater than the new minimum rate applicable to the next contract period.

When a WD is issued reflecting decreases in wage or benefit rates issued previously, a contract price decrease is only warranted when the contractor voluntarily decreases the wages or benefits paid or provided to the employees. WDs list minimum wage and benefit rates, and a contractor is not required to decrease the wage or benefit of the employees in order to comply with a new WD. If a voluntary decrease is made by the contractor, follow the same guideline as for an increase and reduce the contract price.

c. Payroll taxes applicable to the wage adjustment. Employer payroll taxes which are calculated as a percentage of wages paid (i.e., Social Security taxes, Federal or state unemployment taxes, and workers compensation insurance) , are included in the wage differential calculation to the extent that these taxes apply to the actual wage adjustment. Only the employer's share of the taxes is considered. In some states, worker's compensation insurance (WCI) is expressed as an hourly rate and not a percentage of wages. No adjustment would be allowable for such WCI inasmuch as the SCA wage increase would not cause a related increase in the contractor's cost of WCI. No adjustment is allowed for tax rate increases. However, the current tax rate applicable to the contractor for the time period being adjusted should be used in computing the payroll tax portion of the adjustment.

(1) Social Security (FICA). If the FICA rate is scheduled to change during the period for which adjustment is made, the adjustment should reflect both the current rate and the new rate. Estimate the number of hours for each period and apply the applicable rate to determine the total FICA adjustment for the period. As stated above, the appropriate FICA rate is adjusted only to the increase to wages, not the total wage.

(2) Unemployment taxes. Federal Unemployment Taxes (FUT) and State Unemployment Taxes (SUT) are not usually impacted by a WD revision. Unemployment taxes are paid by contractors on wages up to a specific annual ceiling or cap. The current FUT rate of .8% is only paid on wages up to a cap of $7,000. SUT rates and caps may vary by state and by employer experience. Since annual employee wages have usually exceeded the cap without regard to the new wage rates under revised WDs, typically no additional FUT or SUT is required. Such taxes would not be allowable unless the contractor documents their applicability to the wage increase. The contract price will not be adjusted specifically for changes in the FUT or SUT rates. The CO verifies the applicable SUT tax rate by contacting the contractor's state unemployment tax office, or requesting appropriate documentation (i.e., state-issued tax notices) from the contractor. If an adjustment is due, it is only for the SUT percent times the wage rate differential.

Example: Assume the SUT rate is 2% (.02), the SU cap is $14,000 and an employer's WD rate for a classification increased from $6.00 per hour to $6.50 per hour. For an Employee working 40 hours per week and earning only the minimum rate required by the WD, the cost to the employer would increase by $20.80 for the year ($.50 x 2080 hours x .02). If the cap was $13,000, then the cost to the employer would be $10.40 ($13,000 [cap] less $12,480 [amount earned in prior year] x .02).

(3) Workers compensation insurance (WCI). WCI rates vary for each state, and for each contractor according to the nature of their business, compensation claim history, and employee classification. There is usually no ceiling or cap. The claim may include an amount for WCI applicable to the wage adjustment. In some states, WCI is expressed as an hourly rate, not as a percentage of wages. No adjustment would be allowable since the SCA or FLSA wage increase would not cause a related increase in the contractor's WCI cost. Again, the CO verifies the applicable WCI rates by contacting the state employment tax office, or by requesting documentation from the contractor.

(4) Taxes applicable to fringe benefits. Generally, payments made by contractors into legitimate SCA fringe benefit plans are not subject to the application of payroll taxes (FICA, FUT, SUT or WCI) as are wages. Typically, such payments are premiums on health or life insurance policies or plans. If the revised WD increases the health and welfare requirement under SCA, and the contractor elects to provide this increase in premiums paid to a legitimate plan, the adjustment for this benefit should not include payroll taxes because they do not necessarily apply to that payment. If the contractor pays the SCA-required fringe benefits direct to the employees in the form of wages or cash, such payments are subject to payroll taxes and any adjustment to the benefits thus paid would include an adjustment for the accompanying taxes. If the claim includes payroll taxes on fringe benefit increases, the CO should question the manner of benefit payment.

d. General and Administrative Expenses, Overhead, and Profit. General and administrative expenses (G&A), overheads, and profit are not allowable as part of the SCA contract price adjustment. Increases in general liability insurance and bonding costs are also not allowable as part of the SCA adjustment.

e. Employee reimbursements. Employer expenses reimbursed to the employee by the contractor, such as payment for fuel, mileage, meals, lodging, and uniform allowances, are not considered

compensation when calculating the hourly wage rate paid. The CO must ensure that reimbursements of this nature are not included when the hourly wage rate is calculated from payroll records.

9-7. Fringe Benefit Adjustments.

a. General. The fringe benefits listed in area WDs most often consist of (1) a specified hourly rate for health and welfare plans (health or life insurance, pension benefits, etc.); (2) a stated number of holidays; and (3) a stated number of vacation weeks.

b. Health and Welfare rates (H&W). The allowable hourly adjustment is the difference between the new hourly fringe benefit rate and the hourly rate of the benefits actually provided by the contractor during the previous contract period. Historically, DOL has issued a 'low' H&W fringe benefit rate ($.90 through 31 May 1997) and a "high' H&W fringe benefit rate ($2.56 since 1994). As a result of protracted litigation initiated by the Service Employees International Union challenging the methodology upon which these levels had been determined, the DOL changed to a 'single benefit" level for H&W fringe benefits in June, 1997. The 'high" H&W fringe benefit rate will be 'grandfathered' for contracts (and follow-on contracts for substantially the same services) that currently require $2.56 per hour. The single benefit level will be applied in the same manner as the lower rate. The lower level will be revised by the DOL annually until such time as it equals the 'grandfathered' $2.56 higher rate. As of June, 1998, the single benefit rate was set at $1.39. COs should contact the CIR Specialist for guidance on the application of the two rates.

(1) Low Rate: If the low rate is provided by the DOL, apply it to each hour paid by the contractor to the employee, up to a maximum of 40 hours per week, including paid non-work hours such as holiday and leave time.

(2) High ('Grandfathered') Rate: If the high rate is required by the WD, apply it to all hours worked, including hours in excess of 40 per week, but not including holidays, leave time or any other paid hours that were not actually worked. This high H&W level is applied and evaluated on an average of the total fringe benefit cost to the contractor for all hours worked by all non-exempt service employees used on the contract, not on an individual basis as is the lower H&W benefit level. As a result the contractor may incur a benefits cost of less than $2.56 for some employees, while incurring a cost in excess of $2.56 for other employees. Fringe benefits provided to exempt employees as well as the hours worked by these individuals must be excluded in evaluating any claim involving the high fringe benefit level.

c. The allowable hourly adjustment is the difference between the new hourly fringe benefit rate and the hourly rate of the benefits actually provided by the contractor during the previous contract period.

d. Holidays. When the revised WD increases the number of required holidays, the contractor may claim an adjustment for the increased cost. The adjustment is the SCA minimum wage rate for each classification working on the contract, times the number of increased holiday hours (usually 8 hours per specified new holiday). However, if in the preceding period, the contractor provided more holidays or leave time than the revised WD required, an adjustment for the increase in SCA-required holidays is not due.

e. Vacation. Area WDs usually list vacation benefits as a number of weeks earned per total years of service. Total years of service include continuous employment on predecessor contracts. (Continuous employment may include employment with more than one predecessor contractor if each performed essentially the same services in the same location, with essentially no break in that service.) Unless the WD states otherwise, vacation benefits become vested on the employee's anniversary date. The anniversary date is the date of the month the employee was first employed on the contract. A vacation adjustment is only applicable if the revised WD changes the original vacation benefit or entitlement criteria. No adjustment is permitted merely because an individual employee's seniority has increased his or her entitlement to an unchanged WD benefit.

Example: The original WD required one week vacation after one year of service, two weeks vacation after three years, and three weeks vacation after five years. The revised WD now changes the vacation requirement to: two weeks vacation after one year, and three weeks vacation after five years (the three-year entitlement was dropped and the five-year entitlement remains unchanged). An adjustment equal to one week's pay at the new, revised WD wage rate may be claimed for each employee who will reach their one-year or two-year anniversary date during the next contract period. No adjustment is required for employees reaching their third or greater anniversary date during the next contract period because there was no change in their benefits or entitlement criteria.

f. Part-Time employees.

(1) Part-time employees are entitled to fringe benefits unless specifically excluded by the WD. Therefore, the contractor is allowed to claim appropriate adjustments for these employees as well as full-time employees. The amount of holiday and vacation adjustment is prorated on their normal schedule of hours worked.

Example: An employee who regularly works 17 hours per week on the contract would receive 17/40ths of the full-time benefit for a holiday or vacation. If the revised WD authorized an additional holiday, the contractor would be entitled to an adjustment for that employee equal to the WD wage rate multiplied by 8 hours multiplied by 17/40ths.

(2) Part-time employees working on an irregular schedule are entitled to holiday pay based on the number of hours worked in the workweek preceding the holiday. Vacation for irregularly scheduled employees is based on the number of hours worked in the year preceding their anniversary date.

g. Overtime. Some cost increases associated with overtime hours are reimbursable and some are not. Generally, overtime hours are paid at a premium rate of time and one-half or double time. The straight time portion of WD or FLSA wage increases are properly reimbursable under a price adjustment claim, but the premium portion of such wages are not. The contractor has the ability to manage his work force so that overtime hours do not occur by rescheduling of employees and/or hiring additional workers. Therefore, the overtime premium payments are viewed as within the contractor's control. An exception may be considered in the rare instance that the overtime hours were actually required and/or authorized by the contract.

Example: The contractor's employees work a total of 12,000 hours in a given labor Category of which 1,000 hours were considered overtime and paid at time and one-half the regular rate of pay. The WD increased the wage rate for that classification by $.30 per hour. The contractor would be entitled to a price adjustment of $3,600 ($.30 x 12,000), but would not be entitled to the additional premium of $150 ($.30 x .5 x 1,000) that occurred due to 1,000 of the hours being overtime.

9-8. Wage Determinations Based on Collective Bargaining Agreements (CBAs). The wage rates and monetary fringe benefits in an incumbent contractor's CBA, provided to the contract agency in a timely manner (FAR 22.1012), will become applicable as SCA minimum compensation for the following

contract or option period. This requirement is statutory and becomes effective whether or not the new or revised CBA is incorporated into the contract.

a. The CO will obtain the CBA by contacting the incumbent contractor, and the union representing their employees, with written notice as required by FAR 22.1010. If the CBA is not received by the agency in accordance with the timeliness of FAR 22.1012, the CBA or its revisions will not be applicable to that contract period. The timely CBA must be submitted by the CO to the DOL with the SF 98 request for that contract period and DOL will issue WDs reflecting these same rates, provided the CBA does not contain certain prohibited contingency provisions. Contingencies that provide for wage/fringe benefit increases only upon incorporation into a government contract or upon the contractor receiving a price adjustment (and similar contingencies) are prohibited by DOL. Such CBA WDs will be incorporated into the appropriate solicitation, new contract, or option period.

b. Contract price adjustments under SCA clauses are limited to those classifications performing contract work and subject to such CBA provisions. Employee classifications not subject to the CBA provisions may be subject to the provisions of an area WD.

c. Solicitations. When DOL has not responded to an SF 98 request for a CBA type WD applicable to a solicitation, the CO may include the clause at FAR 52.222-47 ("Service Contract Act Minimum Wages and Fringe Benefits") and a copy of the incumbent's actual CBA in that solicitation so that the process is not delayed. When the CBA WD from the DOL is received by the CO, it should be reviewed for consistency with the CBA it reflects, and incorporated into the solicitation. If the CBA WD is received subsequent to the issuance of the solicitation, or after award, it should be incorporated into the contract without adjustment of contract price (because the rates were already in the solicitation under this Clause).

d. Options. If the incumbent contractor has provided a new or revised CBA to the Corps in a timely manner (see FAR 22.1012-3), the CO must attach a copy to the SF 98 request applicable to the following contract period. If the CBA is not new or revised, but is an existing (or continuing) CBA with wage and benefit increases scheduled to be effective during the following contract period, it should still be submitted to DOL prior to the beginning of each contract period. If the agreement between the contractor and the union expires prior to the award of the previous contract period, or the union no longer represents the contractor's employees, the provisions of the original CBA will no longer be applicable to the following contract period. An SCA area type WD may be applicable instead of a CBA type WD.

9-9. CBA Wage Determination Revisions. The effective dates of CBA wage and benefit increases do not always coincide with the start of a contract period. In such cases, the contractor is only reimbursed for that portion of the contract period affected by the increase. For example, if an annual option period began 1 October, and CBA increases became effective 1 January of the following year, the increased wages are effective for nine months of the option period. The adjustment is limited to those nine months. DOL often issues "short form" WDs for option periods. This type of CBA WD merely references by name the CBA between the incumbent contractor and its unions. There are no specific wage or fringe benefit amounts listed. Without the specific rates listed on the WD, the CO must determine the allowable adjustment by reviewing the CBA provisions. The adjustment is limited to the allowable wage rates and monetary fringe benefits as noted in paragraphs 9-7 and 9-8.

9-10. CBA Provisions Subject to Adjustments. Wage and benefit provisions found in a CBA (or WD based on a CBA) are adjusted in the same manner as area type WD adjustments. However, CBA provisions are often more varied and complex.

a. Shift Differentials. This pay is often required by CBAs and is specified as an additional wage rate for hours worked at different time schedules (*example: an additional $.05 per hour for the shifts worked between 4:00 pm and midnight, and $.08 per hour for the hours worked between midnight and 8:00 am*). These are not considered "overtime" provisions, but additional SCA-required minimum wage rates. As such, they are covered by SCA and subject to adjustment under the Clause.

b. Vacations. Some CBAs specify an accrual period of less than one year, such as weekly or monthly. Each week, pay period, or month the employee earns (accrues) the vacation benefit hours. Price adjustments for increases in vacation benefits should be computed with the same application of accrual criteria, particularly for adjustments applicable to short term contract extension periods.

Example: If a CBA increased vacation benefits from four hours every two weeks worked, to five hours every two weeks, the adjustment would be computed on each employee for each two-week period within the extension. However, if the WD had required an increase of vacation benefits for one year of service to two weeks for one year of service, the adjustment for the extension period would be limited to those employees who would reach their one year anniversary dates within that extension period.

c. Sick Leave, Jury Duty, or Bereavement Leave. If such leave is a CBA requirement, the adjustment should be based upon the difference between the new requirement and the amount actually paid in the prior contract period. Again, only the contractor's costs are to be considered when impacted by any revised CBA provisions. Revisions which reduce the contractor's share (cost) for plan benefits should be considered a reduction in SCA-required benefits and adjusted accordingly.

Example: The contractor's previous CBA calls for 5 sick days per year with an annual 'cash out' provision for any unused sick leave at the end of the year. The new agreement changes the sick leave provisions to 10 sick days per year with no 'cash out' provision, but does permit employees to accumulate sick leave in the same manner as Federal civil service employees. The contractor's claim for reimbursement of the difference between 5 days per year per employee and 10 days per year per employee is not appropriate for reimbursement unless the contractor can reasonably demonstrate that all this sick leave will actually be used and therefore the cost will be incurred.

d. Overtime. Many CBAs provide overtime compensation for hours worked in excess of a standard schedule (i.e., time and one-half rates for hours worked over 8 hours per day, or double-time pay for Sunday or holiday work). Such overtime provisions (premium payments) are not required by SCA, nor are they considered fringe benefits under SCA. Any increases to such compensation requirements would not be subject to adjustment under the Clause.

e. Retirement and Pension Plans, Health or Life Insurance. If such plans are a CBA requirement the adjustment should be based upon the difference between the new requirement and the amount actually paid in the prior contract period. Only the contractor's portion of the costs are to be considered when these plans are affected by CBA provisions. Revisions which reduce the contractor's contribution to a benefits plan should be considered a reduction in SCA-required benefits and adjusted accordingly.

f. Other Premium Payments. Payments made as a result of CBA provisions for work conditions or rules are not enforceable under SCA, and therefore are not subject to adjustments under the Clause.

Examples: Show-up or Call-in payment. CBA requires an employee to be paid a minimum of 4 hours wages if called to work on their regularly scheduled day off. The employee may work only 1 hour, but is paid 4 hours. The three non-work hours are not an SCA-required benefit, nor are they included in the hours adjusted

for wage increases.

9-11. Equivalent Fringe Benefits. As previously stated, adjustments are limited to the difference between the new benefits required on the WD or CBA, and the actual benefits provided by the contractor in the prior contract period. A contractor may furnish any combination of bona fide fringe benefits to their employees to meet the requirement of the WD.

Example: The WD requires H&W benefits of $1.39 per hour and $.50 per hour in pension benefits. The contractor provided a health plan costing $1.99 per hour and met the requirements for both benefits. If either benefit increases, the contractor may claim an adjustment for that amount. However, if the contractor had paid $2.13 per hour for a plan providing similar benefits, any price adjustment claim for an increase in either benefit would be offset by the payment made in excess of the former minimum benefits.

A review of price adjustment claims for increased benefits under SCA should include an inquiry on equivalent benefits provided by the contractor. Note that any payments by a contractor for benefit plans, in excess of those benefits required by the WD, do not offset wage requirements under SCA. However, payment of additional wages may be used to offset required fringe benefits, provided they are clearly identified as such on payroll records and communicated as fringe benefit 'cash equivalents' to the affected employees. All such payments need to be considered when evaluating SCA price adjustment claims.

Example: The contractor's minimum pay rate under the WD is $7.00 per hour and the minimum H&W fringe benefit level is $.90 per hour. The contractor was paying employees $7.10 per hour plus a health insurance plan payment that costs $1.00 per hour. The new WD leaves the wage rate at $7.00 per hour, but increases the H&W fringe benefit minimum to $1.15. The employer decides to maintain his health insurance plan payments of $1.00 per hour, but begins paying employees $.25 per hour in additional wages separately identified as a cash equivalent fringe benefit payment. The contractor would be entitled to only $.05 per man hour price adjustment under these circumstances. The minimum required under the WD is $8.15 ($7.00 hourly rate + $1.15 H&W). The rate actually paid prior to the WD change was $8.10 ($7.10 hourly rate + $1.00 health insurance). The cost increase that will actually be incurred by the contractor and caused by the WD change is $.05

($8.15 less $8.10).

9-12. Unlisted Classifications. When the WD initially issued for a contract or solicitation does not include all SCA non-exempt labor classifications proposed by the contractor, such missing classifications must be added (conformed) to the applicable wage standards after award. An SF-1444 is submitted to DOL in accordance with FAR 22.1019 and 52.222-41(c)(2) to establish enforceable SCA minimum wages and benefits for the unlisted classes. Unlisted classifications are not subject to price adjustments under these clauses in the base period of a new contract, or in any subsequent periods when the classification is initially conformed.

a. Indexing conformed wage and benefit rates. Frequently, the classifications, which were conformed in the first contract, continue to be missing from subsequent WDS issued by DOL for following contracts or contract periods (options). If the conformed classifications continue to be employed on the contract, the old, conformed rate is brought forward into the following contract period by "indexing" it to the rates which do appear on the revised WD for the new period. The indexing computation is performed by the contractor, with notice to and verification by the CO. The method is set forth below:

(1) Determine the percentage of change from the rates listed on the old WD to the rates listed on the new WD, for each classification used on the contract.

(2) Compute the mean average of these percentages to determine the "index" rate by dividing the total of the percentage changes by the total number of classifications used on the contract.

(3) Apply this average percentage change to the wage rate that was conformed in the previous contract period. This indexed amount is an allowable adjustment under the Clause.

Example: the old WD listed seven classifications, five of which were used on the contract (A, B, C, F, and G). The contractor also used Classification X which did not appear on DOL's WD. A conformance was submitted for Classification X and DOL had approved a rate of $10.00 per hour. At the first option period, DOL issued a WD which changed the listed classifications in the following manner:
A = +3% B = +3.5% C = -2% F = no change G = +2.5%
The total of these changes is 7%; divided by 5 to obtain the average change for listed classifications, which is 1.4% increase. This index rate is applied to the conformed

Classification X ($10.00 times 1.4%) to provide the SCA enforceable new wage rate of $10.14 per hour. The increase of $.14 per hour is an allowable adjustment under the Clause.

b. Follow-on contracts. If a labor classification was conformed in the previous contract, but does not appear on the WD initially provided for a new, follow-on contract, the conformed classification should be added to the solicitation and resulting contract by reference attached to the applicable new WD. A rate should be established by the CO for this classification by using the indexing method to carry the rate from the old contract to an indexed relationship with the new WD. A new SF 1444 is not required.

9-13. Fair Labor Standards Act (FLSA) Adjustments. The policies and procedures described above for SCA adjustments also apply to revisions of the FLSA minimum wage. No contract adjustment is made for FLSA minimum wage increases which are signed into law prior to contract award, even though the effective date of the increase is after award. Given public notice of the change in the FLSA minimum, the contractor would have anticipated the increase when developing the original bid or proposal and there should be no adjustment of the contract price.